

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FEB 13 2009

DAVID J. MALANDI, CLERK
BY
DEPUTY _____

CLEM'S YE OLDE HOMESTEAD
FARMS, LTD., ET AL.,
Plaintiffs,

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v.

CIVIL NO. 4:07cv285

BILL BRISCOE, ET AL.,
Defendants

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On December 8, 2008, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff Clarence T. "Casey" Clem, Jr.'s Motion for Partial Summary Judgment against Hensley Industries, Inc. (Dkt. 97) should be DENIED, Plaintiff Clem's Ye Olde Homestead Farms, Ltd.'s Motion for Partial Summary Judgment against Bill Briscoe (Dkt. 112) should be DENIED, Hensley Industries, Inc.'s Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 118) with respect to Plaintiffs' claims under 42 U.S.C. §§ 6972(a)(1)(A) and (B) as to the "A" claim should be GRANTED, Hensley Industries, Inc.'s Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 179) on the applicability of the economic loss doctrine should be GRANTED, Defendants LBJ Trucking Co., Inc.'s and Robert Ramirez's Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 180) as to the "A" claim should be GRANTED, all motions for summary judgement on the "B" violation should be DENIED, and

Clem's Ltd's complaint for tort should be DISMISSED for lack of standing. On February 11, 2009, the United States Magistrate Judge DENIED Plaintiffs' motion for reconsideration of portions of the report and recommendations (*see* Dkt. 287).

The court, having made a *de novo* review of the objections and response raised by Defendant Bill Briscoe and Plaintiffs (Dkts. 256, 263, & 265), as well as the Magistrate Judge's order on the motion for reconsideration, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of Defendant and Plaintiffs are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court, and rules as follows:

- Plaintiff Clarence T. "Casey" Clem, Jr.'s Motion for Partial Summary Judgment against Hensley Industries, Inc. (Dkt. 97) is **DENIED**;
- Plaintiff Clem's Ye Olde Homestead Farms, Ltd.'s Motion for Partial Summary Judgment against Bill Briscoe (Dkt. 112) is **DENIED**;
- Hensley Industries, Inc.'s Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 118) with respect to Plaintiffs' claims under 42 U.S.C. §§ 6972(a)(1)(A) and (B) as to the "A" claim is **GRANTED**;
- Hensley Industries, Inc.'s Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 179) on the applicability of the economic loss doctrine is **GRANTED**;
- Defendants LBJ Trucking Co., Inc.'s and Robert Ramirez's Motion for Partial Summary Judgment Against Plaintiffs (Dkt. 180) as to the "A" claim is **GRANTED**;
- All Motions for Summary Judgement on the "B" violation are **DENIED**; and

- Clem's Ltd's complaint for tort is **DISMISSED** for lack of standing.

IT IS SO ORDERED.

SIGNED this 13th day of Feb., 2009.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE